

FILED

MAR 21 2011

CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
D e p u t y

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

DANIEL RIOS

§

V.

§

CIVIL ACTION NO. 5-11CV0021-C

§

GOODWILL INDUSTRIES OF  
LUBBOCK, INC.

§

§

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Daniel Rios, Plaintiff, complaining of Goodwill Industries, Defendant, and for cause of action would respectfully show the Court as follows:

1. Plaintiff is a citizen of the United States and a resident of the State of Texas.
2. Defendant Goodwill Industries of Lubbock, Inc. is an organization operating in Lubbock, Texas and may be served with process by service upon its registered agent for service, Anna Braye, 715 28<sup>th</sup> Street, Lubbock, Texas 79404.
3. Plaintiff brings this action under the Americans with Disabilities Act of 1990, 42 U.S.C. §§12101 et seq. (hereinafter referred to as "ADA").
4. This Court has jurisdiction of this action pursuant to 42 U.S.C. §12117 and 28 U.S.C. §1331.
5. Venue is proper in the Northern District of Texas under 28 U.S.C. §1391(b).
6. Plaintiff has satisfied all conditions precedent to initiating this court action by timely filing a charge of discrimination against Defendant and by bringing this action within ninety days after receiving a right to sue letter from the Equal Employment Opportunity Commission ("EEOC").

7. Plaintiff is a former employee of Defendant. Plaintiff was, at all times relevant to this cause of action, an eligible employee under the ADA.

8. Defendant is an employer under the ADA.

9. Plaintiff was employed by Defendant from April 2009 until May 2010 when he was fired. At the time he was fired, Plaintiff was a donation attendant and was earning \$8.25 an hour.

10. The Defendant, for the purpose of harassing and retaliating against Plaintiff and to try to force him to quit his job, transferred Plaintiff, who is legally blind, from a store that was within walking distance from Plaintiff's home, to a store that was too far for Plaintiff to get to on his own, and refused to reasonably accommodate Plaintiff's disability by refusing his request to remain at the store close to his home. By engaging in such conduct, Defendant has violated the ADA by discriminating and/or retaliating against Plaintiff on the basis of a disability or perceived disability and by failing to furnish a reasonable accommodation for such disability.

11. On or about July 30, 2010, Plaintiff filed a Charge of Discrimination with the EEOC. Thereafter, on or about November 11, 2010, Plaintiff received a right to sue letter from the EEOC. Plaintiff timely filed this action within the ninety day period required by the right to sue letter.

12. The unlawful conduct of Defendant, as described above, has caused and will continue to cause Plaintiff harm.

13. As a result of Defendant's conduct, Plaintiff has suffered damages in the form of lost wages and benefits, as well as mental anguish and/or other non-economic damages.

14. Plaintiff is entitled to recover from Defendant the value of the lost wages, lost benefits and non-economic damages incurred as a result of Defendant's conduct. Additionally, because Defendant's conduct was intentional, willful and malicious, Plaintiff is entitled to recover liquidated/punitive damages. Plaintiff also seeks to recover interest on the amount of damages

and such other and further equitable relief that the Court deems appropriate, for which claim is hereby made.

15. Plaintiff is also entitled to recover from Defendant reasonable attorney's fees and other litigation expenses, for which claim is hereby made.

WHEREFORE, Plaintiff prays that Defendant be served with and answer the claims asserted herein and that, on final trial, Plaintiff be awarded judgment against Defendant for actual damages, liquidated/punitive damages, equitable relief, prejudgment and post-judgment interest as allowed by law, attorney's fees, cost of court and such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully Submitted,

JOHNSTON & MILLER  
Attorneys at Law  
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By:



J. Craig Johnston  
State Bar No. 00787784

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

THIS WILL CERTIFY that a true and correct copy of this request has been mailed on  
this the \_\_\_\_ day of March, 2011, and addressed as follows:

Robert W. St. Clair  
Fargason, Booth, St. Clair, Richards & Wilkins, L.L.P.  
P.O. Box 5950  
Lubbock, TX 79408-5950

  
\_\_\_\_\_  
J. Craig Johnston